

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 7905/Del/2019  
(Assessment Year: 2015-16)**

ITO, Ward-9(2), New Delhi	Vs.	First Class Infrabuild Pvt. Ltd, 616A, (16A 6 <sup>th</sup> Floor), Devika Tower, Nehru Place, New Delhi
(Appellant)		(Respondent)
<b>PAN: AACCF1309A</b>		

Assessee by :	Shri Satyen, CA Shri A. T. Panda, Adv
Revenue by:	Ms. Harpreet Kaur Hansra, Sr. DR
Date of Hearing	11/03/2026
Date of pronouncement	26/05/2026

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.7905/Del/2019 for AY 2015-16, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 19.07.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2017 by the Assessing Officer, ITO, Ward-9(2), New Delhi (hereinafter referred to as 'Id. AO').
2. The only issue to be decided in this appeal is as to whether the Learned CIT(A) was justified in deleting the addition of Rs. 5,32,33,200 made by the Learned AO by applying the provisions of Section 56(2)(viib) of the Act on account of receipt of share premium by the assessee company in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2015-16 was filed by the assessee company declaring Nil income on 29-09-2015. During the year under consideration, the assessee company was not engaged in any business activity according to the Learned AO. On perusal of the details filed by the assessee, the assessee company during the year under consideration has issued 1000 compulsorily convertible preference shares and 54,800 redeemable preference shares of face value of Rs. 10 each at a premium of Rs. 990 per share. Vide questionnaire dated 13-02-2017, the assessee was asked to file the complete details of share premium received during the year and to verify the applicability of Section 56(2)(viib) of the Act in the case of the assessee company. The assessee vide letter dated 19-09-2017 submitted the details of share allottees. Thereafter, the notice under Section 133(6) of the Act was issued to the share allottees i.e. M/s Ujjwala Power Pvt. Ltd. and M/s Hindustan Clean Energy Ltd. Replies were duly received from them directly by the Learned AO. Further, vide letter dated 24-10-2017 and 16-11-2017, the assessee was asked to submit the valuation of shares as per Rule 11UA of the Income Tax Rules and again asked to explain as to why the provisions of Section 56(2)(viib) of the Act should not be invoked in view of large share premium received. Vide letter dated 23-11-2017, the assessee submitted valuation reports prepared by Shri Sunil Kumar Chaurasia CA wherein the shares have been valued at Rs. 1000 each. Thereafter, notice under Section 133(6) of the Act was issued to CA Sunil Kumar Chaurasia and he was requested to furnish the documents submitted before him by the assessee company reflecting projections for the explicit forecast period and to furnish a computation of terminal value of the company based on perpetual

growth method beyond the explicit forecast period. In reply to the notice under Section 133(6) of the Act, CA Sunil Kumar Chaurasia replied vide letter dated 6-12-2017. The said letter is reproduced in page 2 of the assessment order. In the said letter, the Chartered Accountant cum Valuer duly mentioned the basis of valuation together with the details submitted by the assessee. Summons under Section 131 of the Act was issued to CA Sunil Kumar Chaurasia and his statement was recorded by the Learned AO on 14-12-2017 and 26-12-2017 wherein he stated that the valuation report submitted by him is not as per the Income Tax Act and also not as per Rule 11UA of the Income Tax Rules. The relevant extract of the reply was given by him vide reply to Question Nos. 10 and 12 are reproduced in page 3 of the assessment order.

4. The Learned AO noted that the CA cum valuer did not mention the details provided by the assessee to him. In the statement dated 26-12-2017, the CA cum valuer could not even explain the discounted cash flow (DCF) method or explain the formula to arrive at the value per share as per DCF method at Rs. 1000 per share. Thereafter, a show-cause notice dated 15-12-2017 was issued to the assessee. In response to the show-cause notice, the assessee requested for a copy of the statement of CA Sunil Kumar Chaurasia and requested for cross-examination of CA Sunil Kumar Chaurasia. An opportunity of cross-examination of CA Sunil Kumar Chaurasia was provided, but the assessee refused to cross-examine him on 26-12-2017 and the case was adjourned to 27-12-2017.

On 27-12-2017, CA Sunil Kumar Chaurasia did not appear. However, the assessee was again show-caused on 27-12-2017 as to why there should not be made an addition of Rs. under Section 56(2)(viib) of the Act as assessee not carrying on any business could not

justify the receipt of share premium of Rs. 990 per share. The assessee on 28-12-2017 resubmitted the chart, which he claimed to be part of DCF method, which included the balance sheet, profit and loss account, depreciation and assets details for 28 years in just two sheets with the detail that the commercial operations commencement is 28th February 2018. Ultimately, CA Sunil Kumar Chaurasia was cross-examined on 28-12-2017 by the authorized representatives of the assessee company. In reply to the show-cause notice, the assessee merely submitted that the earlier replies that valuation report from an accountant has been obtained to justify the price of the shares. The assessee further submitted that the shares were issued only to the holding company Hindustan Clean Energy Ltd., which has vast experience in solar power plants and that the proposed solar power plant by the assessee company has got delayed. It was further submitted that the shares issued to Ujjwala Power Pvt. Ltd. have been acquired by the holding company i.e Hindustan Clean Energy Ltd.

5. The learned AO however not satisfied with the replies observed that as per the returns filed by the assessee for assessment years 12-13, 13-14, 16-17 and 17-18, there has been no business activity of the assessee and no income from any activity has been shown thereon. Hence, the assessee could not justify the projected profitability as per the DCF method of the valuation report and ultimately proceeded to make an addition under section 56(2)(viib) of the Act. The learned AO also rejected the valuation report submitted by the assessee. The learned AO determined the fair market value of equity share at Rs. 36.07 per share as per net asset value method. Since the issue price of Rs. 36 per share had been held to be the fair market value, the excess amount of Rs. 964 (1000-36) was sought to be added and accordingly a sum of

Rs. 5,32,33,200 was added in the assessment by applying the provisions of section 56(2)(viib) of the Act.

6. We find that 1000 compulsorily convertible preference shares (CCPS) were issued to the holding company of the assessee M/s Hindustan Clean Energy Limited and 54800 redeemable preference shares (RPS) were issued to Ujjwala Power Private Limited having face value of Rs 10 each at a premium of Rs 990 per share. It is pertinent to note that no equity shares were issued at all. As per the terms of the issue of CCPS, each CCPS was convertible into 100 equity shares of Rs 10 each after 18 years. Hence it is very clear that no premium at all was charged for issuance of CCPS by the assessee. Hence the provisions of section 56(2)(viib) of the Act per se cannot be applied for shares issued to the holding company M/s Hindustan Clean Energy Limited.

7. In respect of redeemable preference shares (RPS), we find that the same were issued to an unrelated party M/s Ujjwala Power Private Limited and as per the terms and conditions, the said preference shareholder would be able to redeem the shares after a lock in period of 5 years at 12% return per annum. In other words, Ujjwala Power Private Limited would have to stay as a preference shareholder in the assessee company and it would be entitled for preference dividend of 12% every year. But in the meantime, M/s Ujjwala Power Private Limited had sold the redeemable preference shares to the holding company M/s Hindustan Clean Energy Limited i.e. even before the lock in period on 10-11-2017 at Rs 1000 per RPS. Accordingly, the premium received from Ujjwala Power Private Limited was returned back before the expiry of lock in period by the assessee company and in its place, the name of the

Holding company i.e. M/s Hindustan Clean Energy Limited was substituted.

8. Since no equity shares were issued by the assessee company to anyone, the applicability of determination of fair market value as per Rule 11UA of the Rules need to be done in accordance with Rule 11UA(1)(c)(c) of the Rules and Rule 11UA(2) of the Rules which refers to the valuation of the unquoted shares other than equity shares. According to this, the value of these shall be estimated at the price which it would fetch if sold in the open market and the same shall be supported by a valuation report from a merchant banker or a chartered accountant. In the instant case, the assessee company had got the shares valued from a CA using DCF method. The option to use either DCF or NAV method is always given to the assessee as per the rules. The learned AO cannot force the assessee to apply only NAV method when DCF method is applied by the assessee. Even if the projections used by the valuer in the DCF method of valuation does not match with the actuals, still the revenue cannot doubt the validity of the said valuation. It is a fact that the complete valuation report along with the feasibility report prepared by professionals along with the basis of valuation and details of project planned by the assessee were duly placed before the learned AO, which had not been considered by the learned AO in the instant case. It is pertinent to note that RPS were issued at Rs 1000 each to Ujjwala Power Pvt Ltd and the same were transferred to the Holding company of the assessee at the same price. Hence the value of such share that would fetch in the open market is Rs 1000. Hence the value of Rs 1000 each adopted by the assessee is strictly in accordance with Rule 11UA(1)(c)(c) and Rule 11UA(2) of the Rules. These facts and contentions were duly appreciated by the learned CIT(A) while granting relief to the

assessee. Hence we do not find any infirmity in the said order. Accordingly, the grounds raised by the revenue are dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 26/05/2026.

**-Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 26/05/2026  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi